

PLANNING COMMISSION MINUTES

August 18, 1999

CALL TO ORDER: Chairman Maks called the meeting to order at 7:00 p.m. in the Beaverton City Hall Council Chambers at 4755 SW Griffith Drive.

ROLL CALL: Present were Chairman Dan Maks; Planning Commissioners Sharon Dunham, Charles Heckman, Eric Johansen, Don, Kirby, Vlad Voytilla, Tom Wolch.

Staff was represented by Associate Planner Veronica Smith, Assistant City Attorney Ted Naemura and Recording Secretary Cheryl Gonzales.

NEW BUSINESS

PUBLIC HEARINGS

Chairman Maks opened the public hearing and read the format for the meeting. There were no disqualifications of Planning Commission members. No one in the audience challenged the right of any Commissioner to hear any of the agenda items.

A. CPA99-0012/RZ99-00008 – 157TH AVENUE PECHAN PROPERTY

This proposal is to reassign the County Residential – 15 units per acre (R-15) designation to City Urban Medium Residential Comprehensive Plan map designation and City (R-2, which is defined as 2,000 square foot lots) Urban Medium Density Zoning District, an equivalent zoning designation. The site is located south of SW Scholls Ferry Road, north of SW Barrows Road, on the west side of SW 175th Avenue. The site is within the R-15 (County) zone and is approximately 1.65 acres in size. Tax Lot 00300; Map 2S1-05BD.

Veronica Smith stated that this is a request to rezone property recently annexed into the City, plan designation is Urban Medium Density and zoning district is Urban Medium Density R2. Staff findings are in Appendix A, B, Exhibits A, B.

Chairman Maks asked Commissioners if any had taken a site visit; all had.

Commissioner Kirby questioned the zoning for the adjoining properties, were they all R5 all the way around. Ms. Smith answered that the area surrounding the property on the north side of Barrows Road is R5; property south of Barrows is R2. The properties on the south side are smaller parcels. Also both are within the City of Beaverton. Commissioner Kirby pointed out there was conflicting information with regard to what property was within the City and what property was not. This was based on information in Exhibit A and

the vicinity map.

Ms. Smith stated that possibly the map on the wall might be out of date. Commissioner Kirby confirmed that the area north of Barrows Road was R5.

Commissioner Kirby inquired about the history relating to how this flag area was determined to be annexed. How was the process initiated, by the City of Beaverton or the property owner?

Ms. Smith, after some discussion with senior staff members, understood, that at the time this development took place, it was originally zoned at a higher density. But since the property was developed within the City limits it remained at the higher density. So this was down-zoned. Commissioner Kirby's intention was to confirm the end result of the rezone.

Chairman Maks stated that they were not up-zoning, they were just following the UPAA. Also, there was no choice as this all followed the UPAA, through the IGA. He reminded the Commission this was basically administrative, having to follow the UPAA. Ms. Smith commented that as a matter of history, when the subdivision that was currently built around it was approved, they requested a change in zone from the higher density to the R5. Consequently, what is seen here is a result of that action.

Commissioner Kirby commented that he was trying to reconcile these differences and was concerned whether or not the property owner was comfortable with the request and has no issue with developing at an R2 level. Chairman Maks made the point that the UPAA does not always match perfectly with regard to densities. It might be well to ask when the UPAA is going to be reviewed next, there having been other instances of miss matches.

Ms. Smith commented that with regard to the UPAA, Title 3, this would lead to looking into crosswalk issues for the green spaces, for purposes of clarification.

Commissioner Wolch had queried also why such a small parcel became part of an annexation; why had this been left in the County and was now being brought into the City of Beaverton? Ms. Smith answered at the time, the property owner had property to the north, and possibly for personal reasons he chose not to annex at that time. No doubt he might have had a farm deferral, making for lower taxes keeping it in the County until he was ready to develop it. Commissioner Wolch considered it odd that when a big block of area annexes for some reason, that someone within that area can chose not to be a part of the action. Ms. Smith confirmed the fact their policy was a voluntary program. At the time of any annexation, the property owner must choose to be in the City of Beaverton. Commissioner Wolch asked if the new annexation policy would try to deal with this because of the current resultant skewed service areas. Ms. Smith, concerning future annexation, stated these were valid issues. However, in her discussion about policy with Councilor Stanton, the direction given them was that they would not pursue annexing properties unless it was voluntary. Chairman Maks confirmed that Council had definitely taken that stance, it had been longstanding. Commissioner Wolch stated that present

policy appeared to set up areas as possibly transfer areas. Chairman Maks added that the number one reason for Council's policy was not to create animosity, as well as the likelihood of a significant tax base difference.

Commissioner Dunham asked if there had been any feedback from the neighbors regarding the blue sign which had been visibly posted, understanding this was not a project application at the site. Ms. Smith responded she had received two phone calls from neighbors about zoning and what they were planning to do on the property. The latter could only be addressed after submission of a Development Review Application.

Commissioner Heckman pointed out that the staff report, page 4, paragraph 2, specified what the City must do in regard to County designations of density use provisions standards.

Chairman Maks for a point of clarification stated the County land zoning is R15 and asked what R2 would work out to with regard to the number of units per acre. There was some discussion and Ms. Smith responded approximately 20%.

Chairman Maks noted that there was no public present to speak on the issue and closed the public portion of the hearing process.

Concerning the Applicant, Chairman Maks asked the Commissioners:

Commissioner Heckman stated that Applicant had followed all the rules of the UPAA and the urban growth standard framework policies and approved the action.

Commissioner Kirby commented on alternatives were the property owner to change his mind; stated the staff report was good; his vote was in favor.

Commissioner Dunham stated that everything was consistent with UPAA and Metro requirements.

Commissioner Johansen agreed with all previous comments.

Commissioner Voytilla also agreed with the other Commissioners.

Commissioner Wolch supported both the rezone and the comprehensive plan amendment.

Chairman Maks also supported the previous comments and stated it met all criteria.

Commissioner Heckman then MOVED for approval of CPA99-00012, it met all the criteria required for the annexation required for the annexation plan and policy, or they soon will be met, and the comprehensive plan.

Commissioner Johansen asked for a point of clarification with regard to citing the findings in

Appendix A. Chairman Maks stated it met all the criteria and policy based on the staff report.

Commissioner Heckman WITHDREW his motion and Commissioner Kirby MOVED, Commissioner Heckman SECONDED to approve CPA 99-00012 – 157th Avenue Pechan Property, the Comprehensive Amendment as meeting all the criteria and the facts and findings in the staff report dated July 19, 1999.

The question was called, the motion CARRIED unanimously.

Commissioner Kirby also MOVED, Commissioner Dunham SECONDED to approve RZ99-00008 – 157th Avenue Pechan Property as having met all the criteria, facts and findings in the staff report dated July 19, 1999.

The question was called, the motion CARRIED unanimously.

APPROVAL OF ORDERS:

Before the start of this discussion, Chairman Maks noted that Commissioners Wolch and Kirby would not be able to participate as they were absent from the last meeting.

Chairman Maks stated that a Land Use Order had been prepared and presented to the Commission, but before signing, there would need to be clarification on content.

Commissioner Heckman added that at issue was the 40 foot portion and Condition 5, the transportation use permit. The main item of concern was the area between buildings 4 and 6. But he stated the way this was written, it applied to every transit intersection; i.e., pedestrian and auto related. Commissioner Heckman stated that this was not the intent of the Commission and asked to have the Board polled based on the dialog and discussion of the Commission's last meeting.

Chairman Maks stated that the 40 foot issue only applied to the auto-oriented section of the application.

Commissioner Dunham indicated likewise, the concern was just for that area.

Commissioner Johansen stated the majority of the focus was the intersection identified between buildings 4 and 6 and the access that comes off the signalized intersection.

Commissioner Voytilla stated it was the isolated at the intersection between buildings 4 and 6.

Chairman Maks addressed Commissioner Heckman and stated the Commissioners were in agreement with him as well as himself.

Staff was not present, nor have they heard from the applicant at the present time, but expect to soon so as to ascertain their opinions and information to help clear the matter up.

Chairman Maks stated he had talked to staff and the 120-day clock was ticking. Staff had requested he sign the land use order, if everything else was appropriate, clear enough as written, the order would be activated until Friday, as it required additional signatures from Mr. Bunnell, for official signing off.

Chairman Maks added that if staff felt there was concern, there was application of 2050, Development Code, page PR14, Process and Procedure, for additional clarification of the questionable portion. The item could be forwarded to another meeting; notice would have to be given to the general public.

The meeting would possibly be scheduled September 29, 1999; applicant would need to agree to waive the 120-day stipulation.

Commissioner Heckman commented that everything else in the order was mostly well covered, with this exception of the ambiguous language.

Chairman Maks stated he would sign the land use order and note the exception of CP5 with the understanding there was concern from the Commission with regard to its intent.

Moreover, if this also was an issue for the applicant and staff, the Commissioners would see this at a later date. Commissioner Heckman stated this was also one of the FacRev's conditions.

MISCELLANEOUS BUSINESS:

Chairman Maks stated there needed to be discussion regarding the by-laws, the fact that changes had to go through Council. He also stated he had a similar discussion with the Mayor. Chairman Maks read from page 7, Voting, section 9F: "that a motion to reconsider can be made only at the meeting the vote to be reconsidered was taken. Suspension of this rule is not permitted....."

Chairman Maks commented that one could not even suspend the rule. The main issue of not being able to reconsider except for at that particular meeting was in effect, handcuffs; and the additional part that the suspension of the rule cannot be permitted was in fact leg-cuffs. He commented on the numerous applications presented to the Board, extensive details, complex conditions. At this time, the Commission would be unable to go to the next meeting and reconsider some overlooked detail or an item in need of greater specificity, to fix it by suspending the rule. This was a problem.

Commissioner Heckman added that a reconsideration was done to set aside a wrong.

Presently, the way the rule is, they do not have the opportunity to do that. It was then proposed that Commissioner Heckman draft a successive rule, that could be presented in Section F, or before the opening of the next meeting. As an example in language, Commissioner Heckman wrote, "that a motion to reconsider can be made only at the same meeting or before the opening of the first agenda item at the next regularly scheduled Planning Commission meeting. The motion to reconsider is not debatable...." Chairman Maks asked for discussion from the other members.

Commissioner Kirby asked if this had proposed some difficulties in the past. Chairman Maks in response stated that the key lies in the fact if this body made a mistake, missed a minor detail, questioned an item, the body could not reconsider the action. An example was Miller Sanitary. There was an oversight; they had to go through another process.

Commissioner Kirby questioned the possible additional administrative implications this issue would raise; i.e. would the project require new noticing, would it have to be re-agended. Chairman Maks replied that it would have to be re-agended. Commissioner Kirby stated that this then would be an administrative matter for the Commission. Chairman Maks reminded him that the public hearing would have been closed, making the notice issue void. Chairman Maks added that first the motion to reconsider had to be successful; secondly, there would be need to state why the reconsideration. If it were in fact a minor glitch, it would just be a matter of fixing the condition and then move on. Continuing, if the motion were successful, the Commission would set a time, vote, place for the item to be reviewed. Were it a major item, the City would possibly want to consider re-noticing.

Commissioner Kirby brought up tonight's action on the land use order as an example; reconsidering and re-voting that condition. Chairman Maks stated that would have been a possibility if the Commission was allowed in the by-laws to do so. Commissioner Johansen added that were there a minor revision, a subsequent meeting request on that particular issue would be requested. Commissioner Kirby questioned the process at this point and stated it would then become an agenda item. Chairman Maks noted this would not be the case if it were to fall in the continuance criteria; evidence taken, testimony given, decisions made. He reminded the Commission what a motion to reconsider was: the reconsideration of their decision.

There was additional discussion concerning limiting the amount of questioning of anybody so as to allow that motion to reconsider to be dealt with that same evening; was approval by a simple majority; could the reconsideration not be set as an agenda item, also noted was the importance of the 120-day clock.

Commissioner Johansen commented that this should be done only in extraordinary circumstances. Chairman Maks agreed. He stated that mistakes would inevitably be made. In essence, the Commission could have an application everyone was pleased with but mistakes will happen, oversights, missing a minute detail, but by the adoption of this

process, the Commission would be codifying the procedure, items could be brought to the Commission's attention; i.e. that really was a traffic issue. Bottom line, this would serve the public. The only other alternative to fix this would be for the applicant to appeal. This action would use more staff resources, staff time, applicant's time, and money.

Commissioner Johansen commented his concern was possibly it was too open-ended. It would not be applied in the re-doing of a major decision. Chairman Maks continued, stating the Commission gave directions; staff adopted the findings; a document was signed and in the heat of discussion, a minute detail got lost (albeit an important one). There would be no opportunity to make sure everyone had understood what was decided at the meeting.

Commissioner Voytilla added that it appeared to be triggered by emergency situations, possibly a typo in a staff report, misinformation in a final order done after the fact. However, he felt that it should not be a deliberating type of process, days after the meeting and then coming to the decision of trying to reconsider. This action then should be based on new evidence.

Chairman Maks stated this was a worthwhile comment. Were a Commissioner to have a conversation regarding perhaps a judicial application afterward; all *ex parte*, it would all have to be declared. Disqualification would result, the hearing would have to be reopened. Commissioner Voytilla stated his concern was material evidence that would have been discovered and given a Commissioner. Chairman Maks stated a motion to reconsider was supposed to be based on what happened at the hearing and the evidentiary matter at that time, nothing afterwards. Commissioner Voytilla questioned specific intent.

Chairman Maks stated that summarily his lean was toward having the by-laws as written and just removing the sentence, "suspension of this rule is not permitted." He further commented that for a motion to be reconsidered, it has to be requested by a member of the prevailing party. It would also have to be seconded from a member of the prevailing party. The majority would then have to vote to reconsider. Following this, agreement to suspend the rule. He stated this motion to reconsider is very serious business; the key being reconsideration of conditions only; what they mean, what they apply to, how they apply.

Commissioner Voytilla questioned the impact for the applicant with regard to notification, would they have cause to appeal. Chairman Maks responded that applicants monitor the process very closely. They are aware of their alternatives and time frames.

Chairman Maks re-emphasized the fact that this should only apply to conditions of an application. Commissioner Voytilla agreed with the limitations factor, and expressed concern for ramifications; the possibility for potential abuse.

Commissioner Wolch also expressed concern about the extended period of time after the

meeting and exparte' situations which could have an effect in decision making. He brought up the example of Jack in the Box and the aftermath. Chairman Maks added this was in fact a very good example in that because of oversights, the public was not served, nor the applicant, nor the City.

Chairman Maks suggested to the Commission that he and Commissioner Heckman meet with the City attorney to bring up these issues.

Commissioner Kirby advised that one word be changed in the rule, "the suspension of this rule IS permitted". He also stated that it would be well to add language that the motion to reconsider was to apply to conditions only; also the time frame of this happening was still in question. Commissioner Heckman stated that language in the development code might be applicable in declaring"may be made only before the land use order is signed."

Chairman Maks stated the general consensus appeared to share a number of concerns; how the public would view it, how it would work, when it would work and what it would apply to. But this was, nevertheless, a necessary measure. Commissioner Kirby agreed that it was also very good that the motion would require two votes. Chairman Maks advised that it would need to be approved by the Council as well.

Commissioner Heckman pointed out an excellent article in the Planning Journal that might be beneficial to the Commissioners.

ADJOURNMENT at 8:20 pm.